

DEPARTMENT OF STATE REVENUE

04-20200386.MOD

Memorandum of Decision: 04-20200386
Sales Tax
For The Tax Year 2020

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Business produced documentation establishing a predominate usage of water in its manufacturing process, thus, amounts charged for the sale of water were wholly exempt from sales tax.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-8.1-9-1; IC § 6-2.5-5-1; IC §§ 8-1.5-3-1 to -15; IC § 8-1-2-103; *Graham v. Town of Brownsburg*, 124 N.E.3d 1241 (Ind. Ct. App. 2019); [45 IAC 2.2-4-13](#).

Taxpayer protests the denial of its claim for a refund of sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation that offers electronic assembly, engineering, and design services. Taxpayer claimed a refund of sales tax paid on a utility during 2020. Taxpayer protested the denial and requested resolution without a hearing. This Memorandum of Decision results. Further facts will be supplied as necessary.

I. Sales Tax - Refund.

DISCUSSION

Taxpayer protests the Indiana Department of Revenue's ("Department") denial of a claim for refund. Taxpayer claimed a refund of sales tax paid when it purchased water used in the manufacturing production of "circuit boards and other electronic components." The Department sent two letters to Taxpayer on October 13, 2020. One letter was issued in response to Taxpayer's Utility Sales Tax Exemption Application, Form ST-200. The Department determined Taxpayer failed to complete the application because Taxpayer did not include a copy of a utility bill showing the billing name. A second letter was issued stating the refund request was denied because "Meter [N****9947] is not exempt."

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.

IC § 6-2.5-5-5.1 states, in part:

(a) As used in this section, "tangible personal property" includes electrical energy, natural or artificial gas, **water**, steam, and steam heat.

(b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. The exemption includes transactions involving acquisitions of tangible personal property used in commercial printing. (**Emphasis added.**)

[45 IAC 2.2-4-13](#) provides:

(a) **In general, the furnishing of electricity, gas, water, steam, or steam heating services by public**

utilities to consumers is subject to tax.

(b) The gross receipt of every person engaged as a power subsidiary or a public utility derived from selling electrical energy, gas, water, or steam to consumers for direct use in direct manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#) shall not constitute gross retail income of a retail merchant received from a retail transaction. Electrical energy, gas, water, or steam will only be considered directly used in direct production, manufacturing, mining, refining, oil or mineral extraction, irrigation, agriculture, or horticulture if the utilities would be exempt under [IC 6-2.5-5-1](#).

(c) Sales of public utility services or commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#), based on a single meter charge, flat rate charge, or other charge, are excepted if such services are separately metered or billed and will be used predominantly for the excepted purposes.

(d) Sales of public utility services and commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, or horticulture, **based on a single meter charge, flat rate charge, or other charge, which will be used for both excepted and nonexcepted purposes are taxable unless such services and commodities are used predominantly for excepted purposes.**

(e) **Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominantly for excepted purposes. Predominant use shall mean that more than fifty percent (50%) of the utility services and commodities are consumed for excepted uses.**

(Emphasis added.)

Taxpayer argues it is entitled to a sales tax refund because water purchased is "used to 'chill' a piece of equipment during the production process and to 'clean' items produced prior to final inspection and packaging." The equipment used is a "BTU International" which is a "four stage/zone 'reflow' oven." In order for the items being manufactured to properly cure, the temperature in various zones is lowered through the circulation of water. Taxpayer provided a utility study showing that 74 percent of the water from Meter N****9947 is used in the manufacturing process. Taxpayer also submitted a sampling of utility bills (January 2020, June 2020, and December 2020) showing Taxpayer's address as the location for Meter N****9947.

Taxpayer's utility bills also indicate it pays a "Fire Service - Public Fire Protection Charge" each month. The fee appears to be a flat rate and was \$11.65 in 2019 through early 2020 and increased to \$12.27 for the remainder of 2020. When a municipal water utility incurs costs in providing water service for public fire protection within and outside of town limits, Indiana code allows the water utility to recover such costs. See *Graham v. Town of Brownsburg*, 124 N.E.3d 1241, 1242 (Ind. Ct. App. 2019); IC §§ 8-1.5-3-1 to -15; IC § 8-1-2-103(c) and (d). The "Fire Service" fee does not meet the definition of "tangible personal property" as described in IC § 6-2.5-5-5.1, so it is exempt from sales tax. The Department notes this distinction because Taxpayer's requested refund of sales tax is based on what sales tax would be if it were imposed on the total amount charged on the invoice. However, sales tax is only imposed on the sale of the water and not on the Fire Service fee. Therefore, the Department will calculate the amount of sales tax paid on the sale of water during the tax period at issue and that total will qualify for a refund.

Considering the documentation provided by Taxpayer, Meter N****9947 is wholly exempt because Taxpayer has met the requirements of [45 IAC 2.2-4-13](#) showing more than 50 percent of water was used during the manufacturing process. However, it should be noted that the type of documentation supplied in the protest process is the type of documentation which should be included with the Sales Tax Exemption Application, Form ST-200. Including this type of documentation may result in approval of the claimed exemption rate and avoid the need for a protest.

FINDING

Taxpayer's protest is sustained to the extent that it showed Meter N****9947 is predominately used in the manufacturing process, and Taxpayer is entitled to a refund of sales tax paid on the purchase of water.

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